



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

**[MB Docket No. 17-264; FCC 17-138]**

**Amendment of Section 73.624(g) of the Commission's Rules Regarding Submission of FCC Form 2100, Schedule G, Used to Report TV Stations' Ancillary or Supplementary Services**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) seeks comment on how to modernize two provisions in Part 73 of its rules governing broadcast licensees: Section 73.624(g), which establishes certain reporting obligations relating to the provision of ancillary or supplementary services, and Section 73.3580, which sets forth requirements concerning public notice of the filing of broadcast applications.

**DATES:** Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**; reply comments are due on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 17-264, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Raelynn Remy of the Policy Division, Media Bureau at Raelynn.Remy@fcc.gov, or (202) 418-2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 17-138, adopted and released on October 24, 2017. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Room CY-A257, Washington, DC 20554. This document will also be available via ECFS at <https://ecfsapi.fcc.gov/file/1024026626522/FCC-17-138A1.pdf>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12<sup>th</sup> Street, SW, Room CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

## **Synopsis**

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on how to modernize two provisions in Part 73 of the Commission's rules governing broadcast licensees: Section 73.624(g), which establishes certain reporting obligations relating to the provision of ancillary or supplementary services, and Section 73.3580, which sets forth requirements concerning public notice of the filing of broadcast applications. First, we propose amendments to Section 73.624(g)(2) that would relieve certain television broadcasters of the obligation to submit FCC Form 2100, Schedule G,<sup>1</sup> which is used to report

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<sup>1</sup> This form previously was known as FCC Form 317. The Commission changed the name of this form with the introduction of its Licensing and Management System (LMS) in 2015. Although some commenters in MB Docket No. 17-105 have referred to this form as Form 317, we will refer to the relevant form as Form 2100, Schedule G.

information about the provision of ancillary or supplementary services.<sup>2</sup> Second, we seek comment on whether to update or repeal Section 73.3580 of our rules, which requires broadcast applicants to provide public notice of the filing of various license applications, to afford such applicants more flexibility in how they provide that notice. As part of this inquiry, we seek comment on whether to permit broadcast applicants that currently provide written notice in a local newspaper, instead to provide that notice online. Similarly, in cases where an applicant is required to broadcast announcements regarding the filing of a broadcast application, we seek comment on whether to permit the applicant to refer the public to an Internet website that contains the text of such announcements. We also seek comment on whether there is a comparable way for broadcasters to inform consumers of various license applications, if not done through on-air announcements. With this proceeding, we continue our efforts to modernize our regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.

## **I. Background**

2. *Ancillary or Supplementary Services Reporting Form.* In the 1990s, the advent of digital television technology led Congress, as part of the Telecommunications Act of 1996, to adopt Section 336 of the Communications Act (Act) governing the provision of advanced television services, also known as digital television (DTV).<sup>3</sup> The technological advancements in broadcast transmissions brought about by the analog-to-digital transition gave broadcasters the capacity to use their existing spectrum to offer a range of new services to consumers. In recognition of this potential, Congress in Section 336 established a framework for authorizing broadcast licensees to offer certain services in addition to their free, over the air television service, consistent with the public interest. Section 336 refers to such services as “ancillary or supplementary services.”<sup>4</sup>

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<sup>2</sup> *Ancillary or Supplementary Services Report and Order*, 14 FCC Rcd 19931 (1999).

<sup>3</sup> “Advanced television services” are defined in the Act as “television services provided using digital or other advanced technology as further defined in the opinion, report, and order of the Commission entitled ‘Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service,’ MM Docket 87-268, adopted September 17, 1992, and successor proceedings.” 47 U.S.C. 336(i).

<sup>4</sup> In implementing Section 336, the Commission defined ancillary or supplementary services to include, among other things, computer software distribution, data transmissions, teletext, interactive materials, aural messages,

3. Pursuant to Congress's directives in Section 336, the Commission in 1998 developed a program to assess fees on revenues derived from the provision of ancillary or supplementary services by DTV licensees. The Commission adopted Section 73.624(g) of its rules, which set the fee for feeable ancillary or supplementary services at five percent of the gross revenues received from the provision of such services. And consistent with Section 336(e)(4), it required all commercial full power DTV licensees to file annual reports regarding their use of the DTV bitstream to provide such services.<sup>5</sup> The following year, the Commission created a new form (currently Form 2100, Schedule G) for the purpose of reporting information about the provision of ancillary or supplementary services.<sup>6</sup> Under Section 73.624(g), DTV stations<sup>7</sup> are required to report, among other things, "whether they provided ancillary or supplementary services in the twelve-month period ending on the preceding September 30." Such stations must submit Form 2100, Schedule G, by December 1 every year even if they did not provide ancillary or supplementary services during the relevant reporting period. Failure to file the form "regardless of revenues from ancillary or supplementary services or provision of such services may result in appropriate sanctions."

4. *Public Notice of Filing of Broadcast Applications.* Section 73.3580 of the Commission's rules requires applicants for broadcast licenses and other authorizations to provide public notice of the filing of broadcast applications, with certain exceptions. Section 73.3580 covers a broad range of

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paging services, audio signals, subscription video, and any other services that do not derogate DTV broadcast stations' obligations. Such services may be provided on a broadcast, point-to-point or point-to-multipoint basis, provided, however, that any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary. Section 336(e) of the Act directs the Commission to establish a fee program for any ancillary or supplementary services for which the payment of a subscription fee is required, or for which the licensee receives compensation from a third party in return for transmitting material furnished by that party (feeable ancillary or supplementary services).

<sup>5</sup> In applying the reporting obligation to such licensees, the Commission reasoned that "requir[ing] all commercial DTV licensees to report . . . on their use of the DTV bitstream" was needed in order for the agency "to report to Congress on the [fee] program established. . . and in order that [it] have the information necessary to adjust the fee program as appropriate consistent with the use of the spectrum."

<sup>6</sup> For the first report due on December 1, 1999, the Commission required DTV licensees to report on services provided from the effective date of the *Ancillary or Supplementary Services Report and Order* through September 30, 1999. The Commission thereafter required licensees to report such information (for the twelve-month period ending on September 30) by December 1 every year. The Commission further required that licensees providing feeable ancillary or supplementary services during the relevant twelve-month period submit, on an annual basis, a standard remittance form (FCC Form 159) certifying the amount of gross revenues received from such services and remitting payment of the required fee.

<sup>7</sup> Since the Commission adopted Section 73.624(g), it has expanded the category of DTV stations required to file these reports to include Class A television, low power television (LPTV) and television translator stations.

applications, including applications for a new construction permit; applications to transfer or assign broadcast licenses; applications to renew licenses; and applications for major modification of licenses, among others. The public notice requirements set forth in Section 73.3580 differ depending on the nature of the broadcast application or the kind of service for which authorization is sought. Various provisions in Section 73.3580 obligate applicants to provide written public notice in a local newspaper, and establish requirements governing the frequency, duration, and content of that notice, and the type of newspaper in which such notice must be published. In certain circumstances, Section 73.3580 requires applicants to broadcast messages that announce the filing of an application in addition to, or in lieu of, publication of notice in a local newspaper. Similar to the provisions requiring public notice in a newspaper, the provisions in Section 73.3580 requiring public notice through broadcast announcements prescribe the timing, frequency, duration, and content of such announcements. The Commission adopted its public notice requirements over half a century ago to ensure that members of the public were made aware of broadcast applications, thereby affording them a meaningful opportunity to participate in the broadcast licensing process.<sup>8</sup>

5. *Modernization of Media Regulation Initiative.* In May 2017, the Commission issued a Public Notice launching a review of its media regulations to eliminate or modify those that are outdated, unnecessary or unduly burdensome. In response to that Public Notice, a number of commenters in the media modernization proceeding have asserted that the Commission should amend Section 73.624(g) of its rules to require the filing of Form 2100, Schedule G, only by DTV stations that have provided feeable ancillary or supplementary services during the relevant reporting period and thus must pay the five percent fee on gross revenues derived from such services. In addition, a number of commenters have urged the Commission to update Section 73.3580 of its rules by giving broadcast license applicants the flexibility to provide public notice of the filing of broadcast applications through the Internet.

## **II. Discussion**

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<sup>8</sup> See *Revision of the Public Notice Requirements of Section 73.3580*, Notice of Proposed Rulemaking, MB Docket No. 05-6, 20 FCC Rcd 5420, 5421, para. 3 (2005) (*2005 Public Notice NPRM*).

6. *Ancillary or Supplementary Services Reporting Form.* We propose to modify Section 73.624(g)(2) of our rules to require only those DTV stations that actually provide feeable ancillary or supplementary services to submit Form 2100, Schedule G, on an annual basis.<sup>9</sup> As noted above, Section 73.624(g)(2) currently requires all DTV stations to file Form 2100, Schedule G, with the Commission regardless of whether they have provided ancillary or supplementary services or received revenue from those services during the relevant reporting period. We tentatively conclude that eliminating this reporting obligation for DTV stations that have received no feeable revenues from ancillary or supplementary services during the reporting period would serve the public interest by reducing unnecessary regulation and regulatory burdens that can impede competition and innovation in the video marketplace. Affiliates Associations contends that “[b]ecause only a small fraction of television stations actually offer DTV ancillary or supplementary services, filing these annual reports requires the expenditure of resources for nearly every television station in the country with no countervailing benefit to the Commission or public.” Regardless of how many stations provide feeable ancillary or supplementary services, we tentatively conclude, based on the comments filed to date in MB Docket No. 17-105, that the costs imposed by applying Section 73.624(g)(2) to all DTV stations outweigh any associated public interest benefits. No commenter has articulated a compelling rationale for imposing the reporting obligation on all DTV licensees, and we tentatively find no such rationale. Indeed, we note that no commenter in the media modernization proceeding has asserted that the Commission should continue to apply the Section 73.624(g)(2) reporting obligation to all DTV stations irrespective of whether they provide feeable ancillary or supplementary services.

7. To the extent the Commission applied the annual reporting obligation to all DTV licensees so that it could “report to Congress on the [fee] program . . . and [give the agency] the information necessary to adjust the fee program as appropriate consistent with the use of the spectrum,” we tentatively conclude that such a broad application of the reporting obligation no longer is needed to

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<sup>9</sup> We also propose to revise Form 2100, Schedule G, to conform to the rule amendments proposed herein. In particular, we propose to revise the form to eliminate the question “whether a fee was charged for the provision of [ancillary or supplementary] service” and the subsequent question “[f]eeable – yes or no?”.

carry out these objectives because the obligation would continue to apply to DTV stations that derive revenue from feeable services. We seek comment on our proposal and tentative conclusions.<sup>10</sup> Parties opposing the proposed amendments to Section 73.624(g)(2) should explain how the benefits derived from such rules, if any, outweigh the costs.

8. *Public Notice of Filing of Broadcast Applications.* We seek comment on whether to update Section 73.3580 of our rules to provide broadcast licensees with more flexibility as to how they inform the public about the filing of certain applications.<sup>11</sup> When the Commission adopted its public notice requirements decades ago, Americans obtained information in ways that are vastly different from how they do today. The Internet has become a major part of consumers' daily lives and now represents a widely used medium to obtain information.<sup>12</sup> Given that Americans today are accustomed to using the Internet to obtain a wide array of information, we believe that viewers and listeners may be more likely to expect to obtain information about broadcast applications online.

9. We therefore seek comment on whether we should update Section 73.3580 to permit applicants to provide public notice of the filing of broadcast applications either by publishing such notice in a newspaper, or by posting such notice on an Internet website, as some commenters have suggested. In particular, we seek comment on whether to allow applicants that currently are required under Section 73.3580 to publish notice of the filing of an application in a local newspaper, to provide such notice instead on an Internet website. We also seek comment on whether, in cases where an applicant is required to provide notice of the filing of an application through broadcast announcements (whether or not in conjunction with written notice in a local newspaper), the applicant should be permitted instead to post at least a portion of the content of those announcements online, together with a link to the applicant's

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<sup>10</sup> Pending final action on our proposal, we direct the Media Bureau to consider whether to waive the December 1, 2017 deadline for the submission of FCC Form 2100, Schedule G, by stations that have provided no feeable ancillary or supplementary services during the reporting period ending September 30, 2017.

<sup>11</sup> Although the Commission in 2005 proposed to expand the Section 73.3580 newspaper notice requirements by eliminating the exemption applicable to certain stations, *see* 2005 *Public Notice NPRM*, we tentatively find that expanding those requirements would be unreasonable in the current media environment, and propose to terminate that proceeding.

<sup>12</sup> *Amendment of Section 73.1216 of the Commission's Rules Related to Broadcast Licensee-Conducted Contests*, Report and Order, MB Docket No. 14-226, 30 FCC Rcd 10468 (2015).

online public file containing the relevant application, and to broadcast the address of the Internet website containing such information. We also ask for comment on whether there is a comparable way for broadcasters to inform consumers of various license applications, if not done through on-air announcements.

10. In the alternative, we seek comment on whether there is a need to impose any public notice obligations on certain applicants, given the ready availability of many license applications on the Commission's and stations' websites today. In particular, we note that the Commission's rules generally require that broadcast applicants place their license applications and related materials in the Commission-hosted online public inspection file and provide a link to that file on the home page of their websites, if they have websites. In addition, pursuant to Section 309 of the Act and its implementing rules, the Commission routinely gives public notice of the filing of broadcast applications. Members of the public also can be notified of the filing of broadcast applications by signing up to receive Commission-generated RSS feeds. In light of these various means of receiving notice of pending broadcast applications, we seek comment on whether the public interest would be served by repealing Section 73.3580 in its entirety.

11. Given the questions above regarding updating or repealing the rule, we tentatively conclude not to move forward with the proposals in the *2005 Public Notice NPRM* regarding this rule. Specifically, twelve years ago, the Commission proposed: (1) to eliminate the exemption of certain stations from the newspaper publication requirement; and (2) to establish specific text for the required broadcast and newspaper notifications in cases of assignments and transfers of control, based on concerns that such notice is often confusing. Instead of expanding the public notice requirements in the manner discussed in 2005, we now seek to streamline them in a manner consistent with how the public currently accesses and consumes information. We seek comment on our tentative conclusion.

12. Based on the record, we tentatively find that, at a minimum, updating Section 73.3580 would advance the public interest by affording applicants more flexibility in the means by which they provide notice of prospective and pending broadcast applications, while giving consumers improved access to information enabling them to participate in the licensing process. We seek comment on this



tentative finding. We seek to modernize our rules to better reflect how broadcast audiences consume information today.

13. We seek comment on whether we should continue to impose different notice obligations based on the kind of service for which an applicant is seeking authorization (*e.g.*, Class A, low power, booster, translator, etc.) or the nature of the application at issue (*e.g.*, construction permit, modification, renewal, assignment, transfer of control, etc.). Are there justifications for applying different public notice requirements to these kinds of applicants and applications that remain valid today? Are there certain types of applications that merit broader announcement than others, such as transfers of control or renewals? If we were to deem online posting of notifications regarding the filing of broadcast applications an adequate form of public notice, how should we treat applications for a new construction permit?

14. As suggested by some commenters, should we craft requirements similar to those we adopted in updating Section 73.1216 of our rules (otherwise known as the Contest Rule), which similarly contemplate that public notice of certain information will be provided by broadcasters through both the Internet and broadcast announcements? If so, what aspects of the Contest Rule should guide our revisions to Section 73.3580? Parties urging us to adopt rules that deviate from, or are similar to, the rules governing contest disclosures should explain the basis for their assertions.

15. How, if at all, could the Commission streamline or simplify the public notice requirements of Section 73.3580 further to reduce costs and regulatory burdens for broadcasters, while ensuring that notice of pending or prospective applications is sufficient to enable robust public participation in the licensing process? Several commenters have asserted, for example, that Section 73.3580 as written is needlessly complex and confusing. As noted above, could the online public inspection file, which contains information about pending broadcast license applications, serve as an adequate substitute for newspaper publication (or other forms of notice) in certain cases, and thereby permit elimination of Section 73.3580 in its entirety? If so, would it be necessary to require stations to broadcast announcements regarding the filing of applications and the location of the online public file?

16. Finally, we note that Part 73 of the Commission's rules contains other provisions that require public notice through newspaper publication, broadcast announcements, or a combination of the two.<sup>13</sup> Although no party in the media modernization proceeding has asserted that we should update these provisions, we seek comment on whether any revisions to these rules are justified. To the extent parties support revising Section 73.3580, we seek comment on whether we should make similar revisions to these other rules. We also seek comment on what, if any, other Commission rules would be affected by potential rule amendments discussed herein and what, if any, additional conforming edits to other rule sections would be necessary.

### **Initial Paperwork Reduction Act Analysis**

17. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

### **Ex Parte Rules**

18. Permit-But-Disclose. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex*

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<sup>13</sup> 47 CFR 73.3594(a)-(c) (requiring public notice, through newspaper publication or broadcast announcements that meet specified requirements, of the designation for hearing of certain broadcast applications); 73.3525(b)(2) (requiring that a broadcast applicant who withdraws its application pursuant to an agreement with a competing applicant must give public notice of such withdrawal in a newspaper that meets specified requirements).

*parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

## **Filing Requirements**

19. Comments and Replies. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

20. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., CY-A257, Washington, D.C. 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

21. People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

#### **Additional Information**

22. For additional information on this proceeding, contact Raelynn Remy of the Policy Division, Media Bureau, at [raelynn.remy@fcc.gov](mailto:raelynn.remy@fcc.gov), or (202) 418-2120.

#### **Initial Regulatory Flexibility Act Analysis**

23. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) the Commission has prepared this Initial Regulatory Flexibility Act Analysis (IRFA) concerning the possible significant economic impact on small entities by the rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.

#### **A. Need for, and Objectives of, the Proposed Rules**

24. The potential rule changes discussed in the NPRM stem from a Public Notice issued by the Commission in May 2017 launching an initiative to modernize the Commission's media regulations. Several commenters in the proceeding have argued that the Commission should amend Section 73.624(g) of its rules to require the filing of Form 2100, Schedule G, only by digital television (DTV) stations that have provided feeable ancillary or supplementary services during the relevant reporting period and thus must pay the five percent fee on gross revenues derived from those services. In addition, a number of commenters have urged the Commission to update Section 73.3580 of its rules by giving broadcast license applicants the flexibility to provide public notice of the filing of broadcast applications through the Internet.

25. The NPRM proposes amendments to Section 73.624(g)(2) that would relieve DTV stations that have provided no feeable ancillary or supplementary services of the obligation to file Form 2100, Schedule G, annually.<sup>14</sup> The NPRM also seeks comment on whether to amend or repeal Section 73.3580 of its rules to give broadcast applicants flexibility to provide public notice of the filing of a license application through the Internet.<sup>15</sup> The rule revisions on which the NPRM seeks comment are intended to reduce unnecessary regulation and regulatory burdens that can impede competition and innovation in the media marketplace.

## **B. Legal Basis**

26. The proposed action is authorized pursuant to Sections 1, 4(i), 4(j), 303(r), 309, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 309, and 336.

## **C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

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<sup>14</sup> Under the current rule, all DTV stations must file this form annually regardless of whether they have provided ancillary or supplementary services or received revenue from those services during the relevant reporting period. The failure to file the form could subject a DTV station to enforcement sanctions.

<sup>15</sup> The public notice requirements in the current rule differ depending on the nature of the broadcast application or the kind of service for which authorization is sought. In some cases, broadcast applicants must provide written public notice in a local newspaper. In other cases, the rule requires applicants to broadcast messages that announce the filing of an application in addition to, or in lieu of, publication of notice in a local newspaper.

27. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The rules proposed herein will directly affect small television and radio broadcast stations. Below, we provide a list of such small entities.

- Television Broadcasting
- Radio Stations

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

28. In this section, we identify the reporting, recordkeeping, and other compliance requirements proposed in the NPRM and consider whether small entities are affected disproportionately by any such requirements.

29. *Reporting Requirements.* The NPRM does not propose to adopt reporting requirements.

30. *Recordkeeping Requirements.* The NPRM does not propose to adopt recordkeeping requirements.

31. *Other Compliance Requirements.* The NPRM does not propose to adopt other compliance requirements. The NPRM, however, seeks public input on commenters’ proposals to modify Section 73.3580 to permit public notice of the filing of broadcast applications through the Internet. The NPRM also seeks comment on whether to repeal Section 73.3580 in its entirety, which could affect how broadcasters provide public notice of broadcast applications.

32. Because no commenter provided information specifically quantifying the costs and administrative burdens of complying with the existing Section 73.624(g) reporting requirements, we

cannot precisely estimate the impact on small entities of eliminating those requirements for certain broadcast stations. The proposed revisions to Section 73.624(g) would relieve affected digital broadcast stations, including smaller stations, of the obligation to file certain information with the Commission on an annual basis. These revisions, if adopted, would require only those few stations that provide feeable ancillary or supplementary services to submit Form 2100, Schedule G, annually. We note similarly that no commenter has provided information specifically quantifying the costs and burdens of complying with the existing Section 73.3580 public notice requirements. Therefore, we cannot precisely estimate the impact on small entities of eliminating or changing those requirements. No party in the Media Modernization proceeding, including smaller entities, has opposed the proposals discussed in the NPRM. We thus find it reasonable to conclude that the benefits of adopting the proposals discussed therein would outweigh any costs.

**E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered**

33. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

34. The NPRM proposes to amend Section 73.624(g) to require only those DTV stations that receive feeable revenues from their provision of ancillary or supplementary services to submit Form 2100, Schedule G, on an annual basis. The record reflects that only a small number of DTV stations actually offer ancillary or supplementary services. Accordingly, if adopted, this proposal would eliminate an annual reporting obligation and the expenditure of resources associated with filing the annual reports for a substantial number of broadcast stations, including small entities. Because the revisions to Section

73.624(g) proposed by commenters are unopposed, we anticipate that DTV stations, including affected small entities, would benefit from such revisions.

35. The NPRM also seeks input on whether to adopt commenters' proposals to modify Section 73.3580 to permit public notice of the filing of broadcast applications through online postings on the Internet, as an alternative to publishing such notice in a newspaper, or to repeal Section 73.3580 in its entirety. Commenters' proposals, if adopted, would give all broadcast license applicants, including small entities, more flexibility in how they meet their obligation to notify the public of pending or prospective license applications, while improving the public's access to information enabling it to participate in the licensing process. Commenters assert that permitting public notice through the Internet would be less costly and administratively burdensome than the existing requirement and thus the proposal would provide a less burdensome compliance option for all applicants, including small entities. Because the revisions to Section 73.3580 proposed by commenters are unopposed, we anticipate that affected broadcasters, including small entities, would benefit from them.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule**

36. None.

37. We adopt this NPRM pursuant to the authority found in Sections 1, 4(i), 4(j), 303(r), 309, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 309, and 336.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,

Secretary.



## **Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend Part 73 of Title 47 of the Code of Federal Regulations (CFR) as set forth below:

### **PART 73 – RADIO BROADCAST SERVICES**

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 309, 310, 334, 336, and 339.

2. Amend § 73.624 by revising paragraph (g)(2) to read as follows:

§ 73.624 Digital television broadcast stations.

\* \* \* \* \*

(g) \*\*\*

(2) *Payment of fees* (i) Each December 1, all commercial and noncommercial DTV licensees and permittees that provided feeable ancillary or supplementary services as defined in this section in the 12-month period ending on the preceding September 30 will electronically report, for the applicable period:

(A) A brief description of the feeable ancillary or supplementary services provided;

(B) Gross revenues received from all feeable ancillary and supplementary services provided during the applicable period; and

(C) The amount of bitstream used to provide feeable ancillary or supplementary services during the applicable period. Licensees and permittees will certify under penalty of perjury the accuracy of the information reported. Failure to file information required by this section may result in appropriate sanctions.

(ii) A DTV licensee or permittee that has provided feeable ancillary or supplementary services at any point during a 12-month period ending on September 30 must additionally file the FCC's standard remittance form (Form 159) on the subsequent December 1. Licensees and permittees

will certify the amount of gross revenues received from feeable ancillary or supplementary services for the applicable 12-month period and will remit the payment of the required fee.

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